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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOSE TRUJILLO ROMERO

on

Habeas Corpus.

D044595

(San Diego County
Super. Ct. No. SF130781)

Petition for a writ of habeas corpus. Petition granted in part.

Jose Trujillo Romero seeks a writ of habeas corpus to reduce his current 14 year, eight month sentence. Romero contends trial counsel improperly allowed him to admit that his 1996 juvenile robbery adjudication in case number J92908 constituted a prior serious or violent felony strike, although it was not, and his sentence was illegally doubled under the three strikes law. The People concede the 1996 robbery adjudication was not a strike. Romero's requested remedy is to immediately reduce his sentence to seven years, four months, and order his release. The petition is granted in part and the matter is remanded to the trial court for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

On September 30, 1998, the People charged Romero with five counts of residential burglary and one count each of receiving stolen property and unlawful driving or taking a vehicle. The People alleged Romero had two prior serious or violent felony juvenile adjudications; a 1996 robbery conviction (J92908) and a 1997 residential burglary conviction (J96224). On October 13, 1998, Romero entered a negotiated guilty plea to five counts of residential burglary and admitted case J92908 constituted a prior strike conviction under Penal Code¹ section 667, subdivisions (b) through (i). In exchange, the People agreed that the 1997 juvenile strike allegation would be dismissed in furtherance of justice, the remaining counts would be dismissed, an additional pending residential burglary charge would not be filed and the court would determine the length of sentence. Romero's exposure was 22 years and eight months in prison.

The court sentenced Romero under section 667, subdivision (e)(1): four years on the principal residential burglary count and consecutive two year, eight month terms on the remaining four counts for a total sentence of 14 years and eight months.

Romero did not appeal and his petition to the superior court for a writ of habeas corpus seeking to reduce his sentence was denied on May 18, 2004. Romero filed this petition claiming his sentence is illegal. We obtained the superior and juvenile court files and requested a response. The People filed informal responses on July 30 and August 16, 2004, ultimately conceding the 1996 robbery adjudication did not qualify as a strike

¹ All statutory references are to the Penal Code unless otherwise stated.

because Romero was not armed and simple robbery was not listed as a strike under Welfare and Institutions Code section 707, subdivision (b), until the passage of Proposition 21, effective March 8, 2000.

We issued an order to show cause and appointed counsel for Romero. Counsel filed a formal traverse on October 4, 2004. Counsel contends Romero's sentence should not have been doubled under section 667, subdivision (e)(1), and the sentence should be reduced to seven years, four months. He argues that Romero should be immediately released because Romero is entitled to credits under section 2933 and is not subject to the 15 percent limitation of conduct credits under section 2933.1, subdivision (b), because the residential burglaries were not committed while the dwellings were occupied by another person other than an accomplice. (§ 667.5, subd. (c)(21).) Counsel provides a facsimile letter from a Department of Corrections case records analyst that states:

"Per your request, Inmate Romero's earliest possible release date (EPRD) was calculated two ways: If he were to be resentenced per Penal Code 2933, his EPRD would have been 11-08-03. If he were to be resentenced per Penal Code 667(b) - (i), his EPRD would be 01-12-06. [¶] Again, until amended certified documents are received, his EPRD will remain 11-26-2011 based upon the current documents that are in Inmate Romero's central file."

DISCUSSION

The parties negotiated a plea agreement based on a mutual mistake of law and the court sentenced Romero based in part upon that mistake. The correct remedy is to remand this matter to the trial court for resentencing. This record is devoid of any information regarding Romero's conduct in prison and what conduct credits he has earned

or forfeited. The parties should provide that information to the court and the court should appoint counsel to represent Romero at resentencing.

Because the People concede Romero's 1996 juvenile robbery adjudication is not a strike, no useful purpose would be served by conducting oral argument and Romero's possible impending release requires expedited treatment in the trial court.

DISPOSITION

Let a writ of habeas corpus issue directing the superior court to vacate the December 14, 1998, sentencing order and judgment of conviction, appoint counsel for Romero, resentence him, and enter a new judgment and amended abstract of judgment. This opinion is made final within three days to prevent frustration of the relief granted. (Cal. Rules of Court, rule 24(b)(3).)

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.